

PUBLIC WORKS DEPARTMENT, HARYANA

IRRIGATION BRANCH

The 21st September, 1967

No. 10846/E-Gaz/356/93/May, 1967.—The following officers of the Irrigation Branch, Haryana, have passed the Departmental Professional Examination, prescribed under paragraph 1.105 of P.W.D. Code, held on 27th and 29th May, 1967 :—

Serial No.	Name and Designation	Circle/date to which attached
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CIVIL CANDIDATES

Sarvshri—

1	Dharam Vir Khurana, S.D.O.	Inspection and Control, Talwara
2	Ram Sarup, T.E.	Inspection and Control Talwara
3	Laxmi Datt Sharma, S.D.O.	Hissar B.C.
4	O. P. Gupta, T.E.	B.S.L. Project
5	Mohindra Partap, T.E.	Ditto
6	Satish Kumar Duggal, T.E.	Ditto
7	Inderjit Juneja, T.E.	Bhakra Dam Directorate
8	Madan Gopal Sehgal, S.D.O.	B.S.L. Project
9	Mange Ram Sharma	Senior Design Engineer (Mechanical) has passed in paper "A" Civil
10	Inder Mohan, T.E.	B and B.D.O.

ISHWAR CHANDRA, Secy.

LABOUR DEPARTMENT

The 21st September, 1967

No. 8824-3Lab-67/28436.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer Labour Court, Rohtak in respect of the dispute between the workmen and management of M/s. Rohtak Gohana Bus Service (P) Ltd., Rohtak.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT ROHTAK

Reference No. 28 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S ROHTAK-GOHANA BUS SERVICES (P) LTD.
ROHTAK

Present.—Shri S.N. Vats for the workmen.

Shri Mulakh Raj, General Manager of the respondent concern.

AWARD

The Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with proviso to that sub-section of the Industrial Disputes Act, 1947 has referred the following dispute between the workmen and the management of M/s Rohtak-Gohana Bus Service (P) Ltd., Rohtak for adjudication vide Government gazette notification No. 153-SFIII-Lab-67, dated 17th March, 1967 :—

- (1) Whether the workmen are entitled to a higher rate of night allowance ? If so, with what details and from what date ?
- (2) Whether Shri Malik Chand and Shri Tirath Ram are entitled to any uniforms, chappals, washing allowance etc., for the period of their retrenchment ? If so ; with what details and from what date ?
- (3) Whether Shri Malik Chand and Shri Tirath are entitled to any leave for the period of their retrenchment ? If so, with what details ?

The parties have compromised and the management has agreed to give Rs 1.75 paise (Re one and paise seventy-five only) as night allowance to the drivers and the conductors with effect from 4th July, 1967. The night allowance will be paid to them only if the driver or the conductor has to spend the night out of the headquarter by

reason of his duty. The other two demands have not been pressed by the workers. Accordingly I make an award that the conductors and the drivers would be paid night allowance at the rate of Rs 1.75 paise per night with effect from 4th September, 1967 in terms of the statement of the parties. The parties will bear their own costs.

Dated the 11th September, 1967.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 1230, dated 12th September, 1967

This award is submitted in quadruplicate to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

The 23rd September, 1967

No. 8990-Tab-67/28313.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and management of M/s Karnal Co-operative Transport Society, Ltd., Karnal.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 22 of 1966

between

THE WORKMEN AND THE MANAGEMENT OF M S KARNAL CO-OPERATIVE TRANSPORT SOCIETY LTD., KARNAL

Present:—

Sarvshri M.L. Gupta and Madhu Sudan Sharan on behalf of the workman.
Shri M.L. Saini for the management.

AWARD

Sari Mohinder Singh was employed as an Inspector in the Karnal Co-operative Transport Society Ltd, Karnal. His services were terminated on 6th February, 1965 on the ground that he was absent from service since 11th December, 1964. The worker maintains that he remained ill till 14th July, 1965. This gave rise to an industrial dispute and the State Government in exercise of the powers conferred on them by clause (c) of sub-section (1) of Section 11 of the Industrial Disputes Act, 1947 referred the following dispute to this Court for adjudication.—*vide* Government gazette notification No. 431-SF-3-Lab-1-65, dated 23rd June, 1965:—

Whether the termination of services of Shri Mohinder Singh Inspector is justified and in order? If not, to what relief/exact amount of compensation he is entitled?

On receipt of the reference a notice was given to the worker to submit his statement of claim and to the management to submit their rejoinder to the same and they have done so.

A preliminary objection has been taken on behalf of the management that the workers' union had expressed their willingness not press the demand relating to the reinstatement of the claimant Sari Mohinder Singh,—*vide* settlement dated 23rd October, 1965 which is still in operation and has not been terminated in the prescribed manner and as such the reference is not valid. As regards the merits it is submitted that the claimant Sari Mohinder Singh left his place of duty after handing over an application to Sati Bala Nita Chief Inspector for grant of 4 days leave with effect from 27th October, 1964 and then went away without giving his address. This leave was sanctioned. A telegram dated 1st December, 1964 was received from Jalandhar in which the applicant requested for extension of leave. This leave was also sanctioned. After the expiry of this period the claimant did not report for duty and continued to remain absent. A telegram dated 11th December, 1964 was again received from Bombay in which further extension of leave was asked. This leave was not sanctioned. The claimant sent another telegram on 30th December, 1964 from Guziabad for further leave. This leave was not sanctioned and a registered notice dated 31st December, 1964 was sent to him requiring him to resume duty and to explain reason for his continuous absence without leave. This registered envelope was received back with the report "refused". It is said that another telegram dated 15th January, 1965 was received from Bombay from the claimant. So another registered notice dated 20th January, 1965 was given to him pointing out that he was continuously absent from duty with effect from 10th December, 1964 without leave and in case he did not resume duty within a week it would be presumed that he was not interested serving the respondent company any more and in that case his name would be removed from the rolls without any further notice and this envelope was also received back with the endorsement "refused". It is submitted that in these circumstances there was no alternative with the respondent society except to remove his name from the rolls and so his name was removed from the rolls,—*vide* order dated 6th February, 1965.

On behalf of the claimant it is submitted that his relations with the management were strained and Sati Jagat Singh Pehalwan a Director of the respondent society gave him beating. A report was lodged with the Police regarding this incident. Further there was an industrial dispute with regard to undue promotions given to Sarvshri Joginder Pal Bedi and Rajinder Pal who were closely related to the General Manager and the Vice-Chairman of the respondent society and the claimant appeared as a witness against the management in the said dispute. It is alleged that the directors and the share-holders of the respondent society threatened the claimant and said that as he had deposed against them he would be punished and taught a lesson and thereafter the management started harassing him and he was immediately transferred. He asked for joining time which was also refused and was threatened with serious action in case he did not join duty immediately. It is alleged that on account of this harassment he fell ill and asked for leave which was sanctioned after much hesitation.

Thereafter the claimant had to go to Jullundur to see his relation who was found to be seriously ill and so extension of leave was asked through telegram. It is alleged that on account of constant strain caused by harassment and hostile attitude of the management and the serious illness of the relation the claimant fell ill and under medical advice he had to go to Bombay for treatment and there he remained under treatment and had to remain on leave till 14th July, 1965 and when he became fit to join duty, he submitted his joining report to the management on 14th July, 1965, but the management refused to give him duty and he was informed that his services had been terminated by reason of his past hostile attitude towards the management. It is alleged that enquiry was held against the claimant nor any letter intimating the termination of his services was sent to him and so the termination of his services is illegal and is based upon malice. It is that the leave applications sent by the claimant from Bombay were never replied by the management and if at all they were rejected, no intimation of rejection was sent to him and so it is a clear case of victimisation. It was, therefore, prayed that the claimant be allowed compensation for the strain and mental agony which had to undergo due to the harassment caused by the respondent society and that he be reinstated in the service of the respondent society on the same terms and conditions and benefits as had already been enjoyed by him after declaring the order of termination of the services as illegal void and inoperative. It is, prayed that the claimant be paid full pay and compensation for the period he has not been paid by the respondent society.

My learned predecessor Shri Hans Raj Gupta framed the following issues which arise from the pleadings of the parties:—

1. Whether the settlement dated 28th October, 1965 is in operation between the parties and the present reference is not competent because of the settlement?
2. Whether the claimant Shri Mohinder Singh abandoned the service of the respondents?
3. If the above two issues are decided against the management, whether the termination of services of Shri Mohinder Singh is justified and in order? If not to what relief, exact amount of compensation he is entitled?

Issue No. 1.—Ex. RP. 1 is a copy of the settlement arrived at between the parties. This has been proved by the evidence of Shri J.D. Mehta, Conciliation Officer, Faridabad M.W. 1 and the representative of the worker has not questioned the correctness of the copy. Under the terms of this settlement the workers union did not press their demand for the reinstatement of the claimant Shri Mohinder Singh Inspector but reserved their right to re-agitate the same later if so desired. It is submitted on behalf of the management that this settlement continuous to be binding on the parties because the union has not terminated this settlement by giving a notice in writing as laid down in sub-section (2) of Section 19 of the Industrial Dispute Act, 1947. It is further submitted that under sub-section (3) of Section 18 of the said Act a settlement arrived at in the course of conciliation proceedings under the Act is binding on all the parties to the industrial dispute till it is terminated as provided by law. Reliance has been placed on an authority cited as 1958-11 LJJ-109. It has been held in this case that when the concerned workmen withdrew their certain demands though for the time being and this matter was incorporated in the award, they could not raise the same demands once again when the previous award was in force and had not been terminated in accordance with the law. It has been held that the analogy of the principles which underlies the withdrawal of a certain relief or hit cannot apply to industrial proceedings.

I have carefully gone through the authority cited above and in my opinion this case is distinguishable. In this case the workmen withdrew their demand for the present only in view of the then existing position of the company and their salary including dearness allowance being paid and the then cost of living. The settlement of the workmen in the instant case is different in as much as the union specifically reserved their right to re-agitate the dispute relating to their demand for the reinstatement of the claimant Shri Mohinder Singh Inspector, if they so desired. Thus we find that the present dispute which has been created by reason of the demand for the reinstatement of the claimant Shri Mohinder Singh Inspector has been raised strictly in accordance with the terms of the settlement arrived at between the parties before the Conciliation Officer and therefore it cannot be said that the present reference goes against any of the terms of the settlement and is therefore not competent. I accordingly find this issue in favour of the claimant.

Issues Nos. 2 and 3.—Both these issues are connected and can therefore be conveniently discussed together. The claimant Shri Mohinder Singh was admittedly serving the respondent society as an Inspector. He gave an application Ex. RP. 3 for grant of four days leave from 21st November, 1964 which was sanctioned and on the expiry of this leave, he asked for ten days more leave from Jullundur by means of telegram Ex. RP. 4. This leave was also sanctioned. From 11th December, 1964 onwards, the claimant continued asking for extension of leave by means of telegrams without giving the reason as to why he asked for extension of leave. It is alleged that the claimant fell ill and had therefore gone to Bombay for treatment. The telegrams given by the claimant were not confirmed by post and were not followed by any written application nor did the claimant ever sent any medical certificate in support of his alleged illness. The claimant says that on 14th December, 1964 he came to Karnal to withdraw money in order to meet the expenses which were being incurred on account of his illness and then he tried to give an application Ex. RP. 14 to the General Manager Shri Baji Nath who refused to accept this application and turned him out and so he sent this application under post 1 certificate Ex. APP. 15. It seems that the claimant thought that his duty was done as soon as he sent the application copy Ex. APP. 14 by post and he took it for granted that his leave would be sanctioned and thereafter he went on applying for the extension of leave by means of telegrams without giving his address and without bothering to know as to whether his leave was being sanctioned or not. The claimant says that he had applied for leave up to 9th August, 1965 but since he was fit for duty earlier so he presented himself before the management on 14th July, 1965 for being put on duty but no duty was given to him and he was turned out. The case of the management on the other hand is that the leave of the claimant after 11th December, 1964 was not sanctioned and since he continued to remain absent without leave it was presumed that he was no longer interested to remain in service and had abandoned it and so his name was struck off from the rolls with effect from 6th February, 1965.

The first question for determination in this case is whether under the circumstances detailed above the management was justified in presuming that the worker was not interested in continuing to serve them and had abandoned his service so as to justify their action in striking out his name from the rolls or whether at worst it is a case of a misconduct because the worker remained absent from duty without leave and as such he could not be dismissed from service without giving him an opportunity to show cause and holding a regular inquiry. I have given my very careful consideration to all the facts of this case and in my opinion the management was justified in presuming that the worker was not interested in continuing to remain in their service and had abandoned the service notwithstanding the fact that telegrams were being received for extension of leave. There

is nothing on the record to show that the telegrams which were being received by the management were in fact sent by the claimant. No doubt the claimant in his evidence has stated that he gave all these telegrams but the original of the telegrams have not been summoned by him to prove that in fact that the originals were written by him or that they bore his signatures. A telegram can never be accepted as a formal communication. In the present case it cannot be said that the claimant was so short of time that he had no time to write a formal application to the management asking for leave, giving reason for the same and to give a medical certificate in support of his illness. Since the telegrams were not followed by any formal application, therefore, it cannot be said the claimant ever indicated his attention to resume duty and had not abandoned his service. The only written application which according to the claimant was sent to the management is the one dated 14th December, 1964, copy of which is Ex. APP 14. The management have of course denied having received this application and during the cross-examination of the claimant it was suggested to him that this application was a forged one. The representative of the claimant has argued that there is a presumption that an article sent by post is received by the addressee unless it is returned to the sender as undelivered and that it is proved by the postal certificate Ex. APP/15 that the letter copy Ex. APP 14 was in fact sent by post to the management. In normal circumstances this plea would have been accepted but in the peculiar circumstances of this case I am of the opinion that it was the duty of the claimant to have sent this application to the management under a registered cover acknowledgement due. The case of the claimant himself is that his relations with the management were strained and that he was being harassed by them. According to him he had attempted to give the application copy Ex. APP/14 to the management personally but it was not accepted and he was asked to go away. In these circumstances it was all the more necessary for the claimant to have sent this application by registered post acknowledgement due so that he could have a proof that his application had in fact been received by the management. The telegrams said to have been given by the claimant for extension of leave also did not bring any response and yet the claimant did not bother and did not send any application in writing to the management asking for leave or complaining as to why his telegrams or application had not even been acknowledged. Under these circumstances it cannot be said the management had any formal intimation that the claimant was unable to attend after 11th December, 1964 onwards on account of his alleged illness. Unless it is held that the management did receive the application copy Ex. APP/14 which contained the Bombay address of the claimant the management had no means to ascertain his address and therefore was not in a position to communicate with him. In view of all these circumstances I agree with the representative of the management that the management was justified in presuming that the claimant was no longer interested to remain in the service of the respondent and had abandoned his service. The representative of the claimant has not cited any case in which the worker has remained absent without leave for more than six months without intimating even his address and still it has been held that it would be a case of misconduct for remaining absent from duty which would necessitate disciplinary action by way of regular inquiry. I would, therefore, decide issue No. 2 in favour of the management and hold that the claimant Shri Mohinder Singh abandoned the service of the respondents.

Even if it be held that by reason of the various telegrams which were being received by the management in the name of the claimant asking for extension of leave, it cannot be said that the claimant was not interested to continue in the service of the respondent society and at the most it would be a case of misconduct if the evidence of the claimant that he actually remained ill is not believed, I am of the opinion that it is a case of such a grave misconduct that it would not be desirable to order the reinstatement of the claimant on the ground that his services have been dispensed with without holding any inquiry. The claimant did not even bother to furnish his address to the management and the registered letters sent by them were received back with the endorsement "refused". Therefore even if the management wanted to hold a formal inquiry it was physically impossible for them to do so. The management did frame a charge sheet dated 21st January, 1965 Ex. APP 13 against the claimant by reason of his absence from duty without leave and this charge sheet was sent to him by registered post acknowledgement due and this too was received back with the endorsement "refused". Thus there was no other alternative left to the management but to dispense with the services of the claimant and even if the formality of a regular inquiry on account of failure of the claimant to resume duty was not gone through it would not be proper to order his reinstatement or to grant him any compensation.

Before I conclude I would like to mention that I am not satisfied with the evidence of the claimant that he was in fact ill and was unable to resume duty from 11th December, 1964, onwards. The claimant did not obtain any medical certificate to show that he was ill from 11th December, 1964, onwards. The medical certificate Ex. APP/23 given by Dr. V.R. Mayenkar is dated 27th October, 1966 and the Doctor has certified that the claimant remained under his treatment from 14th January, 1965 to 10th July, 1965 and that he was suffering from acute Scilica. Ex. APP/12 is the discharge slip of the Safdarjang Hospital, New Delhi, by which it is sought to which proves that the claimant remained in this Hospital for treatment from 23rd June, 1962 to 16th July, 1962 on account of acute Scilica. Ex APP/13 is the certificate of Doctor Mohan Singh dated 12th July, 1966 certifying that the claimant was suffering from Scilica and that he remained under the treatment of the Doctor from 30th December, 1964 to 10th January, 1965. The representative of the management has rightly pointed out that it is not possible to arrive at any finding on the basis of these certificates because these certificates have not been formally proved by the evidence of the Doctors who are supposed to have given these certificates. Hence it must be held that the absence of the claimant from 11th December, 1964 onwards till he presented himself for duty cannot be justified on any ground whatsoever and the termination of his services is justified and in order. In the circumstances of this case however I leave the parties to bear their own costs of these proceedings.

Dated 26th August, 1967

P.N. THUKRAL,
Presiding Officer,
Labour Court,
Rohtak.

No. 1243, dated the 12th September, 1967

This award is submitted in quadruplicate to the Secretary, to Government, Haryana, Labour and Employment, Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.